



**STATE OF MONTANA
DEPARTMENT OF CORRECTIONS
POLICY DIRECTIVE**

Policy No. DOC 1.3.15	Subject: AMERICANS WITH DISABILITIES ACT (ADA)
Chapter 1: ADMINISTRATION AND MANAGEMENT	Page 1 of 4
Section 3: Human Resource Bureau	Effective Date: July 1, 2008
Signature: /s/ Mike Ferriter, Director	Revised:

I. POLICY

The Department of Corrections will make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability unless to do so would result in an undue financial or administrative burden, constitute a direct threat, endanger the health or safety of any person, or fundamentally alter the inherent nature of the Department's business.

II. APPLICABILITY

The Department, as an employer, will provide equal opportunity in hiring and all other aspects of employment and reasonable workplace accommodations to qualified applicants and employees with disabilities. The Department, as a state correctional agency, will provide visitors access to all public areas, services, and programs; and provide offender access to required or approved activities, services, and programs. The Department will require secure facilities that operate under contract with the Department to fulfill their contractual obligations with respect to offenders with disabilities under the Department's jurisdiction.

III. DEFINITIONS

Department – The Montana Department of Corrections.

IV. DEPARTMENT DIRECTIVES

A. Responsibility

1. The Department director will designate a Department ADA coordinator to assist facility and program administrators' compliance with the Americans with Disabilities Act and Montana Human Rights Act (MHRA).
2. The ADA coordinator will have training in:
 - a. the Americans with Disabilities Act, Title I, affecting employment; and Title II, which requires equal access to state programs and facilities by individuals with disabilities; and
 - b. the challenges faced by offenders with physical and/or mental impairments, programs designed to educate and assist disabled offenders, and all legal requirements for the protection of offenders with disabilities.
3. The Department ADA coordinator, in coordination with the facility administrator, may designate a staff member at each facility or program to assist with implementation of this policy.

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4. It is essential that all Department employees recognize and take seriously all requests for disability accommodation, and any complaints or grievances involving disability discrimination or accessibility.

B. Requests for Reasonable Accommodations

1. Any employee, offender, or member of the general public may request information or request an accommodation by contacting the Department ADA coordinator. A request for information or an accommodation may be done verbally or in writing.
2. Offenders in secure facilities are first encouraged to resolve their requests for accommodation at the lowest level possible; for example, with their unit managers. However, offenders may also directly route any written request for accommodation by using an Offender/Staff Request (OSR) form to the locally designated facility or program ADA staff member or the Department ADA coordinator.
3. A request for accommodation is the first step in an interactive process between the individual and the ADA coordinator, or designee, to clarify the individual's request and to identify any appropriate reasonable accommodation.
4. When the disability is not obvious, the ADA coordinator, or designee, may request reasonable documentation of the disability. Reasonable documentation is information necessary to establish that an individual is a qualified individual with a disability. The individual may be asked to sign a release of information allowing the medical caregiver to respond to the Department. If the individual refuses to provide reasonable documentation, his or her request cannot be processed and a disability determination cannot be assessed.
5. Upon receipt of the necessary documentation establishing that the individual is a qualified individual with a disability, the individual and the ADA coordinator, or designee, will dialogue to consider what accommodation or accommodations would be most effective and reasonable. The Department will make the final determination of the reasonableness of an accommodation.

C. Complaints of Disability Discrimination

1. When an employee, offender, visitor, or other recipient of services provided by the Department believes that he or she has been subject to disability discrimination, he or she must report the allegation to the Department for prompt investigation and any appropriate actions.
 - a. offenders who are unsatisfied with a final decision on a request for an accommodation by the Department ADA coordinator or who are filing a complaint of disability discrimination may file a formal grievance in accordance with *DOC Policy 3.3.3, Offender Grievance Program*, and their facility's offender grievance procedure. The resolution of an OSR sent to an ADA coordinator will be considered as the informal step of the grievance procedure;
 - b. staff, visitors, or the general public will follow the complaint procedure outlined in the ADA Discrimination Complaint Form (see Attachment); and

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- c. all requests, complaints, or grievances involving a disability issue should include specific facts, such as, person or persons involved, structure or barrier involved, the date, time, and place of the occurrence, what was done or said, and the names of any witnesses present.

D. Response to Requests and Complaints

The Department will act promptly to investigate and resolve all requests, complaints, and grievances regarding these issues as follows:

1. Employees and designated personnel at contracted facilities and programs will immediately inform the ADA coordinator of any request, complaint, or grievance involving a disability-related accommodation or discrimination.
2. The ADA coordinator will inform the appropriate supervisor of the request, grievance, or complaint.
3. The ADA coordinator will initiate an investigation or appoint and supervise an individual to investigate the request, grievance, or complaint no later than 10 working days after receiving notice of the request, grievance, or complaint.
4. The appointed investigator will meet with the individual making the request, grievance, or complaint to discuss the ADA policy and steps to initiate further actions to resolve the situation if not satisfied with the initial finding and proposed actions.
5. The investigation should be completed within 120 working days if practicable and written notice made to the complainant if this period is to be exceeded.
6. The appointed investigator will complete a written report of the findings of the investigation and make recommendations for the Department ADA coordinator for a final decision.
7. Whenever compliance with the ADA or MHRA would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, the decision must consider all resources available for use and be accompanied by a written statement of the reasons for reaching that conclusion.

E. Record-keeping Requirements

1. The Department ADA coordinator will retain all documentation pertaining to the request, grievance, or complaint and the ensuing investigation in a separate investigative file. If an employee is involved, this information will not become part of their personnel file.
2. The Department will maintain the confidentiality of all medical information, unless otherwise provided by law. The Department will only disclose information about the request internally on a need-to-know basis to personnel involved in making or assisting in the implementation of the reasonable accommodation or resolution of the grievance or complaint.

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3. The Department ADA coordinator will maintain statistical data regarding complaints, grievances, or requests made pursuant to this policy and will prepare an annual report on ADA activities to the Human Resource division administrator and Department director that includes successes, challenges, and recommendations.

V. CLOSING

Provisions of this policy not required by statute will be followed unless they conflict with negotiated labor contracts which will take precedence to the extent applicable.

Questions concerning this policy should be directed to the Department's ADA coordinator. Copies of this policy directive and any associated operational procedures may be posted on employee and public bulletin boards and made available in offender law libraries.

VI. REFERENCES

- A. 49-3-201 MCA, *Employment of State and Local Government Personnel*; 49-3-205 MCA, *Governmental Services*; 49-3-209 MCA, *Retaliation Prohibited*; 49-4-101 MCA, *Discrimination Prohibited*; 49-4-202 MCA, *Policy of the State*; 53-1-203 MCA, *Powers and Duties of Department of Corrections*
- B. *Title I and Title II of the Americans with Disabilities Act of 1990 (ADA)*, 42 U.S.C. § 12111, *et seq.* and 42 U.S.C. §12131, *et seq.*
- C. 3-0630, *Montana Operations Manual, Equal Employment Opportunity*
- D. *Reasonable Accommodation Guide, Montana State Human Resources Division*
- E. 4-4054; *ACA Standards for Adult Correctional Institutions, 4th Edition*
- F. 4-4429-1; *ACA Standards Supplement, 2008*
- G. *DOC Policies 3.3.1, Legal Rights of Offenders; 3.3.3, Offender Grievance Program; 4.1.1., Offender Admission Process; 4.1.2, Offender Reception and Orientation*
- H. *MSP Procedure 3.3.3, Inmate Grievance System*

VII. ATTACHMENTS

ADA Discrimination Complaint Form



**STATE OF MONTANA
DEPARTMENT OF CORRECTIONS
ADA DISCRIMINATION COMPLAINT FORM**

Complainant: _____ **Date:** _____

Address: _____

City, State and Zip Code: _____

Telephone: _____

Person discriminated against (if other than the complainant) (including department/division if applicable): _____

Division/Individual which you believe has discriminated: _____

Nature of discrimination: _____

When did the discrimination occur? Date: _____

Detailed description of the discriminatory practice or action which occurred:

Do you require a reasonable accommodation in order to more effectively communicate your complaint?

Signature: _____

Please submit this form to the Department ADA Coordinator, McKenzie Hannan at:

McKenzie Hannan
(406) 444-2828
mhannan2@mt.gov